



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9928-46-OGC]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address a lawsuit filed by National Parks Conservation Association, Minnesota Center for Environmental Advocacy, Friends of the Boundary Waters, Voyageurs National Park Association, Fresh Energy, and the Sierra Club (collectively, "Plaintiffs") and Intervenor Defendant Northern States Power Company Minnesota, d/b/a Xcel Energy in the United States District Court for the District of Minnesota: National Parks Conservation Association, et al. v. EPA, Civ. No. 12-3043 (D. Minn.). On December 5, 2012, Plaintiffs filed a complaint alleging that the Administrator of the United States Environmental Protection Agency ("EPA") had failed to perform a mandatory duty to respond to a 2009 letter by the Department of the Interior ("DOI") certifying that visibility impairment in Minnesota's Voyageurs National Park and Michigan's Isle Royale National Park is reasonably attributable to emissions from Xcel Energy's coal-fired Sherburne County Generating Station ("Sherco") in Minnesota. The proposed settlement agreement addresses Plaintiffs' claims and establishes a deadline for EPA to take final action to revise the Minnesota Reasonably Attributable Visibility Impairment ("RAVI") Federal Implementation Plan ("FIP").

DATES: Written comments on the proposed settlement agreement must be received by [INSERT DATE 30 DAYS AFTER PUBLICATION DATE IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by Docket ID number EPA-HQ-OGC-2015-0347, online at www.regulations.gov (EPA's preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW, Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Matthew C. Marks, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3276; fax number (202) 564-5603; email address: marks.matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed settlement agreement.

On October 21, 2009, DOI provided a letter to EPA in which DOI stated "that there exists reasonably attributable impairment of visibility at Voyageurs and Isle Royale due to emissions from the Sherco facility." On December 5, 2012, Plaintiffs filed their complaint in this litigation alleging that, since receiving DOI's letter, the Administrator had failed to perform a mandatory duty pursuant to 40 CFR 51.302(c)(4)(iii) and (iv) to

promulgate a federal RAVI best available retrofit technology (“BART”) determination for Sherco. In response to the lawsuit, EPA filed an answer on February 1, 2013, denying that the Administrator has a mandatory duty to promulgate RAVI BART for Sherco because EPA has not determined that visibility impairment at one or more Class I areas is reasonably attributable to emissions from Sherco. On March 25, 2015, Plaintiffs filed an Amended Complaint, alleging that the Administrator had failed to perform a mandatory duty "to identify and analyze for BART each existing stationary facility which may reasonably be anticipated to cause or contribute to impairment of visibility in any mandatory Class I Federal area where the impairment in the mandatory Class I Federal area is reasonably attributable to that existing stationary facility.”

The proposed settlement agreement would resolve the lawsuit filed by Plaintiffs by establishing that EPA will propose to revise the Minnesota RAVI FIP to include specific sulfur dioxide (“SO₂”) emission limitations for Sherco Units 1, 2, and 3, and take final action on the proposal within seven months of the effective date of the settlement agreement. The proposed settlement agreement also provides that nothing in the agreement shall be construed to limit or modify any discretion afforded EPA by the Act or by general principles of administrative law in taking those actions. See the proposed settlement agreement and attachment for specific details.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed

settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional information about commenting on the proposed settlement agreement.

A. How Can I Get A Copy Of the Settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2015-0347) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use the www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at

www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read

your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: May 20, 2015.

Lorie J. Schmidt,
Associate General Counsel.

[FR Doc. 2015-13127 Filed: 5/29/2015 08:45 am; Publication Date: 6/1/2015]